

ORDINANCE NO. 2287

AN ORDINANCE TO AMEND ARTICLE V ENTITLED SMOKING OF THE CODE OF ORDINANCES OF THE CITY OF HOMEWOOD, ALABAMA WHICH IS TO INCLUDE PROVISIONS AND AMENDMENTS TO DIVISION I OF ARTICLE V ENTITLED GENERALLY AND DIVISION II OF ARTICLE V ENTITLED TOBACCO VENDING MACHINES

BE IT ORDAINED by the City Council of the City of Homewood at a regular meeting, duly assembled, a quorum being present, as follows:

WHEREAS, Environmental Tobacco Smoke is a leading public health problem in the City of Homewood, Alabama and throughout the United States; and

WHEREAS, the use of lighted smoking products inherently creates a health hazard of second hand smoke, which affects the public health, indoor environment, and the enjoyment of public places; and

WHEREAS, there exists conclusive evidence that Environmental Tobacco Smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears, nose, and throat of both smokers and nonsmokers; and

WHEREAS, Environmental Tobacco Smoke, which includes both exhaled and side stream smoke from burning cigarettes, causes the deaths of many thousands of Americans each year; and

WHEREAS, the harmful effects of Environmental Tobacco smoke are not confined to smokers but also cause discomfort and illness to many nonsmokers; and

WHEREAS, Food and Beverage establishments have been shown to be locations of significant exposure to Environmental Tobacco Smoke by the citizens of the City of Homewood; and

WHEREAS, both the Public Health Services National Toxicology Program and the World Health Organizations' International Agency for Research on Cancer identify Environmental Tobacco Smoke as a human Class A carcinogen and state that there is no safe level of exposure; and

WHEREAS, the United States Surgeon General have concluded that involuntary smoking is a cause of disease, including lung cancer in nonsmokers; and

WHEREAS, that the purposes of this ordinance is (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

NOW THEREFORE, BE IT ORDANED BY THE CITY COUNCIL OF THE CITY OF HOMEWOOD, ALABAMA AS FOLLOWS:

1. That Article V, entitled Smoking of the Code of Ordinances of the City of Homewood is hereby amended to read as follows:

ARTICLE V. SMOKING

DIVISION 1. GENERALLY

Section 11-91 Definitions. For the purposes of this division, the following terms, phrases, words, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Bar and lounge: An establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges and cabarets.

City: The City of Homewood, Alabama.

Restaurant: Restaurant means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Employee: Any person who is employed by an employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

Employer: A person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

Health care facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals, or other clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist, and all specialists within these professions and psychologists and weight control clinics.

Motion picture theater: Facilities used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.

Owner: Shall mean and include the lessee, sub-lessee, assignee, part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, managing agent, officers of the corporation or other person having the right of ownership or possession or the right to sell, rent or lease any real property.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind.

Place of employment: Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, restrooms, employee lounges, conference rooms and employee cafeterias. A private residence does not constitute a "place of employment." unless it is used as a child care, adult day care or health care facility.

Public place: Any area, completely enclosed or otherwise, to which the public is invited or permitted, including but not limited to retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, stadiums, sports facilities, waiting areas for any business, establishment, etc., restrooms, elevators, government or civic buildings, educational facilities, medical or health facilities, public transportation, libraries, museums, auditoriums, art galleries and meeting rooms; hotels and motels. A private residence does not constitute a "public place unless it is used as a child care, adult day care, or health care facility.

Retail store: Any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise, food for consumption off the premises, articles or other things, and all activities, operations and services connected therewith or incidental thereto. "Retail store" shall not include hotels, motels, restaurants, those restaurant facilities which are an integral part of a retail store, bars, lounges, catering establishments and other similar facilities.

Retail Tobacco stores: Means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Smoke or smoking: The act of burning, inhaling, exhaling or carrying any lighted tobacco product, weed, filler or plant of any kind in a cigarette, cigar, pipe, hookah or water pipe or in any other device and shall include carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment; or the lighting, emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

Smoke-free: Free from carcinogens, toxins and air pollution of second hand smoke.

Tobacco vending machine: Includes any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, slugs or credit cards.

Private club: Private club means a bona fide nonprofit organization or association which requires membership applications to be filled out for membership that maintains membership records that show the date of application, date of admission after election, date the initiation fees and dues to be paid and the amounts paid. The records shall be kept manually or electronically.

indicating the name and address of each member and the serial number of the membership card issued.

Section 11-92. Enforcement.

The provisions of this article are enforceable by any duly authorized municipal code enforcement officer, police officer or fire department official, or as otherwise allowed by law.

Section 11-93. Violation; penalty.

Any person, firm, or corporation violating any provisions of this division shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 1-8 of the Code of Ordinances for the City of Homewood, Alabama, as amended. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. The business license of a person, firm or corporation shall be revoked following the second violation of the article.

Section 11-94. No smoking area

- (a) No one shall be permitted to smoke in any of the following areas:
 - (1) In any municipal building or facility whether used, owned or leased by the city;
 - (2) All enclosed areas under the control of the city, whether owned or leased including vehicles;
 - (3) In any public transportation vehicle;
 - (4) In any elevator, regardless of its capacity;
 - (5) In any health care facility, regardless of capacity, except that this prohibition shall not apply in the private enclosed sleeping or living quarters of a person living in such facility;
 - (6) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
 - (7) Any educational facilities used for classes, sponsored by any person, firm or corporation, public or private;
 - (8) In any retail stores;
 - (9) All areas available to and customarily used by the general public in all business and nonprofit entities patronized by the public;
 - (10) In any restaurant or eating establishment;
 - (11) Bars;

- (12) Sports arenas and facilities, including enclosed places and in the seating areas of all outdoor arenas, stadiums and amphitheaters.
- (b) No area shall be designated as a smoking area in which smoking is prohibited by the fire marshal or by other law, ordinance, or regulation.
 - (1) Smoking shall be prohibited in Vehicles and motorized equipment owned by the City of Homewood;
 - (2) Smoking shall be prohibited in any common area in apartment buildings, condominiums, retirement facilities, and other multiple-unit residential facilities;
 - (3) Smoking shall be prohibited in any common areas of a mall;
 - (4) In any place of employment.
- (c) Smoking shall be prohibited on the property of the following:
 - (1) Homewood Board of Education;
 - (2) Homewood Park Board
- (d) Smoking shall be prohibited where conditions are such as to make smoking a fire hazard, and in spaces where flammable or combustible materials are stored or handled.

Section 11-95. Exceptions.

- (a) The prohibitions contained above shall not apply to:
 - (1) Private residences, except when used as a licensed child cared, adult day care or health care facility;
 - (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty five percent (25%) of rooms rented to guest in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;
 - (3) Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this section;
 - (4) Outdoor smoking areas of places of employment must be a minimum of 10 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances or other means;

- (5) Smoking by actors as part of a stage production;
- (6) An entire room, hall, building or structure when such room, hall, building or structure is used for private functions, such as weddings, banquets and testimonial dinners, attendance at which is by invitation only, and where seating arrangements are under the control of the sponsor of the function and not of the owner or person in charge of the place. This does not apply to city owned property;
- (7) Open air outdoor dining areas at restaurants;
- (8) The owner or person in charge of any place of employment may designate separate rooms or areas in which smoking is permitted, provided that:
 - * There is no public access;
 - * The smoke in the designated room utilizes a separate HVAC system and is not ventilated or commingled with separate non-smoking areas;
 - * No area shall be designated as a smoking area in which smoking is prohibited by the fire marshal or by other law, ordinance, or regulation;
 - * In "designated smoking" areas, existing physical barriers and ventilation systems shall be used to negate the toxic effect of smoke in adjacent non-smoking areas.
- (9) Nothing in this section shall be deemed to amend or repeal applicable fire or health regulations.
- (b) Nothing in this section shall be deemed to amend or repeal applicable fire or health regulations.

Section 11-96. Regulations regarding posting, etc.

- (a) No person shall smoke in any public place or place of employment, as defined in this article, which has been designated as a "no smoking" area. Such nonsmoking areas shall be identified by clearly, sufficiently and conspicuously posted "no smoking" signs and/or signs with the international "no smoking" symbol.
- (b) Any person who smokes in a posted "no smoking" area is in violation of this article.
- (c) No person shall wilfully destroy, remove or deface any sign posted in compliance with this article, and any such prohibited conduct shall be a violation of this ordinance.

Sec. 11-97. Regulations of smoking in places of employment.

- (a) It shall be the duty of the owner, operator and/or manager of any facility, business, corporation, partnership, agency or vehicle within the purview of this ordinance to comply herewith. Such owner, operator or manager shall post or cause to be posted all "no smoking" required by this article, within thirty (30) days of enactment of this article.*
- (b) Such owner, operator or manager shall inform persons smoking that they are in violation of the law and shall promptly report such violators of the law to the proper authorities.
- (c) It shall be the responsibility and duty of the owner, operator and/or manager of any facility, business, corporation, partnership or agency which employs to disseminate information.
- (d) Where smoking is permitted, suitable noncombustible ash trays shall be provided.
- (e) Lighted matches, cigarettes, cigars, or other burning objects shall not be discarded in a manner that could cause ignition of other combustible material.

Section 11-98. Restaurant regulations.

- (a) Restaurants covered by the provisions of this division shall be designated as nonsmoking, with the exception of that area of a restaurant that has open air dining. Open air dining is defined as an area that is completely open to exterior ventilation within 10 feet outside an enclosed entrance area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances or other means.

Section 11-99. Hotel and motel regulations.

Smoking is prohibited in hotels and motels in the city, and its police jurisdiction, except in that portion of any hotel and motel which has been properly designated by hotel and motel management as a "smoking room" in the private rooms section of the hotel or motel.

Provided further that the percentage of guest rooms of the property designated as smoking rooms at any hotel or motel shall be limited to a maximum of twenty five percent (25%) of the total number of private rooms in the hotel or motel following the effective date of this ordinance. In other words, at least seventy five (75) percent of the total number of private rooms in any hotel or motel in the city or its police jurisdiction, following the effective date of this article, shall be "no smoking" rooms.

Section 11-100. Public restrooms.

- (a) Smoking is prohibited in all public restrooms in the City, and its police jurisdiction, whether or not the owner or manager of the facility has properly

posted this area "public place" or "place of employment" as a "no smoking" area.

- (b) It shall be unlawful, and a violation of this article, for any owner or manager of a public place or place of employment, as defined in this ordinance, to fail to properly post all public restrooms under his, or her, maintenance and control as a "no smoking" area in accordance with the provisions of this article.

Section 11-101. Common areas of malls.

Notwithstanding any other provision of this division, smoking is prohibited in the common area and corridors of all malls and public places within the City and its police jurisdiction and signs shall be posted. This is to include the entrance and exit of the mall and all public places for a minimum distance of fifty (50) feet.

Section 11-102. Reserved.

Section 11-103. Notification.

All retailers selling cigarettes or tobacco products must clearly display the following sign at the entrance to the store selling the product:

**IT IS ILLEGAL TO SELL OR PERMIT TO BE SOLD ANY TOBACCO PRODUCTS
TO ANY PERSON UNDER THE AGE OF NINETEEN (19) YEARS OF AGE**

The notice must be black letters at least one (1) inch in height on a white background, and will be made available through the City Clerk at the request of any retailer.

Section 11-104. Nuisance.

Any violation of this division is hereby declared to be a nuisance. In addition to any other relief provided by this division, the City may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this division. Such application for relief may include seeking a temporary restraining order, a temporary injunction and permanent injunction.

Section 11-105. Construction and validity.

Nothing in this division excuses noncompliance with any state, federal or local law or any rule or regulation which prohibits smoking.

If any portion of this division shall be held unconstitutional, invalid, or unenforceable, such holdings shall not affect the remaining portions nor render the remaining portions invalid, and to that end the provisions hereof are declared to be severable.

Section 11-106. Effective Date

This article shall be effective May 1, 2006.

DIVISION 2. TOBACCO VENDING MACHINES

Section 11-111. Definitions.

For the purposes of this division the following terms, phrases, words, and their derivations shall have the meaning given herein. When no inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

City means the City of Homewood, Alabama.

Employee means any person who is employed by an employer in the consideration for direct or indirect monetary wages or profit and any person who volunteers his or her services for a nonprofit entity.

Employer means any person which employs one (1) or more persons.

Owner means and includes the lessee, sub-lessee, assignee, part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, managing agent, officers of the corporation or other person having the right of ownership or possession or the right to sell, rent or lease any real property.

Person means any person, firm, partnership, association, corporation, company or organization of any kind.

Tobacco accessories means any cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion of tobacco products.

Tobacco products means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, smoking tobacco, and smokeless tobacco.

Tobacco vending machine includes any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, paper bills, trade checks, slugs or credit cards.

Section 11-112. Enforcement.

The provisions of this division are enforceable by any duly authorized municipal code enforcement officer, revenue examiner, police officer or fire department official, or as otherwise allowed by law.

Section 11-113. Sale of cigarettes and other tobacco products from vending machines prohibited.

- (a) No person shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises of any tobacco vending machine used or intended to be used for the purpose of selling or disposing of any tobacco products or tobacco accessories there from.
- (b) Any tobacco vending machine in use on the effective date of this division shall be removed before July 1, 2006.

Section 11-114. Violative machines.

Any tobacco vending machine not removed from the premises or converted to permissible use within the time limit set forth by section 11-113(b) shall be deemed to be a public nuisance, and may be abated by the city in a civil action or other appropriate legal proceeding.

Section 11-115. Violation; penalty.

Any person, firm, or corporation violating any provisions of this division shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as stated below. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder:

First offense	\$250.00
Second offense.....	500.00
Third offense.....	500.00

In addition to the fines set out above, for the third and any subsequent violations of this division, the city council shall conduct a public hearing, wherein the violating party shall be examined as to the fitness of the violator continuing to do business within the city. At the conclusion of said public hearing, the city council may revoke the business license of the violator to conduct business in the city.

Repeated violations may be the basis for a review of and revocation of presently outstanding business licenses issued by the city.

Section 11-116. Construction and validity.

- (a) **Construction with other laws.** Nothing in this division excuses noncompliance with any state, federal or local law or any rule or regulation which prohibits tobacco vending machines.
- (b) **Validity or constitutionality.** If any portion of this division shall be held unconstitutional, invalid, or unenforceable, such holdings shall not affect the remaining portions nor render the remaining portions invalid, and to that end the provisions of this division are declared to be severable.

Section 11-117. Additional remedies for violation of this Article.

Any police officer of the city is hereby authorized to cause a complaint to be filed in the municipal court alleging a violation of any provision of this article against any person found to be in violation of this article, which complaint shall be heard and tried in the municipal court in the same manner as other violations of municipal ordinances of this city are heard and tried. Any person in violation of any provision of this article shall, upon conviction, be deemed guilty of a misdemeanor and thereof shall be punished as provided for in section 1-8 of this Code or as provided for in this Article.

Additionally, any violation of any provision of Article V of the Code of Ordinances shall authorize, in addition to any other fines, penalties or violations provided for in this chapter, the

issuance of a UNTCC pursuant to the provisions of Article II of chapter 8 of this Code.

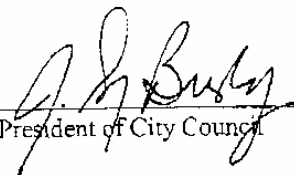
Any recipient of a UNTCC issued for the violation of any provisions of Article V of this Code may, within seventy-two (72) hours from the receipt of such UNTCC, present such UNTCC to the police officer or any officer of the city responsible for the enforcement of the provisions who issued such UNTCC, or the chief of police or his designee and shall provide evidence that the alleged violations as reflected in the UNTCC have been abated within seventy-two (72) hours of receipt of the same by the recipient, and upon investigation, such officer who issued the UNTCC or the chief of police or his designee may, after inspection, void the citation prior to the presentation to the municipal court.

2. That all other provisions of the Code of Ordinances of the City not in conflict with the provisions of this Ordinance are to remain in full force and effect and not be affected by this amendment.

3. That any provisions of the Code of Ordinances that are in conflict with this Ordinance are specifically repealed, pursuant to the terms and conditions of this Ordinance, which amends Article V, entitled Smoking of the Code of Ordinances of the City of Homewood and Division 1 and Division 2 set out therein.

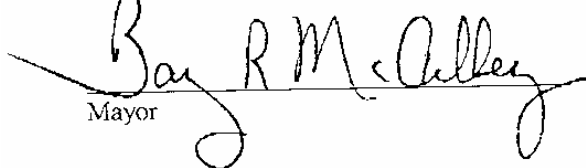
4. That the provisions of this Ordinance shall become effective May 1, 2006.

ADOPTED this the 27th day of March, 2006.



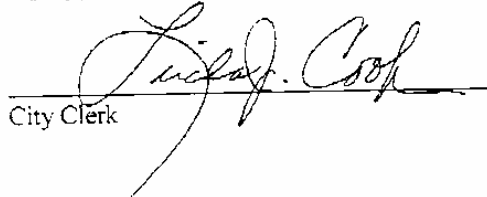
President of City Council

APPROVED:



Mayor

ATTEST:



City Clerk

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